

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBERT W. SWARTZ

Claimant

VS.

BELGER CARTAGE SERVICE, INC.

Respondent

Self-Insured

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Docket No. 239,871

ORDER

Respondent appeals the March 3, 1999, preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes which granted claimant benefits in the form of temporary total disability compensation and medical treatment. The Administrative Law Judge found that claimant had proven accidental injury arising out of and in the course of his employment and that timely notice was provided.

ISSUES

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment on the date alleged?
- (2) Did claimant provide timely notice pursuant to K.S.A. 44-520 or, if not, was there just cause for claimant's failure to provide this notice?
- (3) Is claimant entitled to temporary total disability compensation as ordered?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board will not consider Issue Number 3, regarding claimant's entitlement to temporary total disability compensation, as it does not give rise to a jurisdictional issue under K.S.A. 1998 Supp. 44-551 and is not one of the jurisdictional

issues enumerated in K.S.A. 1998 Supp. 44-534a. Therefore, respondent's appeal of Issue Number 3 is dismissed.

Claimant alleges accidental injury on July 14, 1998, when using a 200-ton crane in Salina, Kansas. Claimant testified that, while climbing in and out of the crane, which was not his normal piece of equipment, he somehow twisted his knee. The day after, claimant had great difficulty ambulating and had to be helped in and out of the crane by his coworkers. When claimant returned to respondent's terminal in Wichita, Kansas, Gary Gibbs, the terminal manager, met claimant with a golf cart and drove him the 50 to 60 yards back to the terminal building.

A coworker, Daniel Zane, was aware of claimant's injury and informed Mr. Gibbs of the problem. Mr. Gibbs acknowledged being aware of claimant's problem, but does not recall any conversation with Mr. Zane about what may or may not have caused the problem. Mr. Gibbs was also aware that the other employees were forced to lift claimant in and out of the crane because of the problems with his knee. He did acknowledge that claimant's difficulties were apparent to him while at the job site.

Claimant immediately contacted Dr. Robert Eyster on July 15, 1998. Dr. Eyster's July 15 office notes indicate that claimant called from Salina, stating that his knee "has locked up [and] he cannot bend his leg."

It is acknowledged that claimant initially turned this in on his health insurance. Claimant stated he was close to receiving a belt buckle for his long years of service with respondent and did not want to jeopardize that award.

K.S.A. 44-520 requires that a worker provide to his or her employer notice of an accident, stating the time and place and particulars thereof. This notice must be provided within 10 days after the date of the accident. K.S.A. 44-520 goes on to state that "actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary."

In this instance, claimant suffered an injury while climbing in and out of a crane in Salina. That was verified by the testimony of Mr. Zane. Both claimant and Mr. Zane advised they discussed claimant's knee problems with Mr. Gibbs, claimant's supervisor. Mr. Gibbs acknowledged being aware that claimant came back from Salina suffering knee difficulties and had to be physically helped in and out of the crane while on the job.

The Appeals Board finds, for preliminary hearing purposes, that the notice provided by claimant to Mr. Gibbs and Mr. Gibbs' actual knowledge of the situation were sufficient to satisfy the requirements of K.S.A. 44-520. In addition, the testimony of Mr. Zane supports claimant's contention that he suffered accidental injury arising out of and in the

course of his employment on July 14, 1998. Therefore, the Order of the Administrative Law Judge, granting claimant benefits, is affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated March 3, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1999.

BOARD MEMBER

c: Charles W. Hess, Wichita, KS
Alisa A. Nickel, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director